IN THE MATTER OF	:	BEFORE THE
JEFFERY A. SCHULTZ	:	HOWARD COUNTY
	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 06-001V

::

DECISION AND ORDER

On March 13, 2006, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Jeffery A. Schultz, Petitioner, for a variance to reduce the 10-foot side setback to 6 feet for a single-family detached dwelling in an RC-DEO (Rural Conservation – Density Exchange Option) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Thomas M. Meachum, Esquire, represented the Petitioner. Gilbert H. Schultz and Jeffery A. Schultz testified in support of the petition. Terri Campbell and Jerome Kelly, Sr., testified in opposition to the petition.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The Petitioner is the owners of the subject property, known as 1510 Long Corner Road, which is located in the 4th Election District on the west side of Long Corner Road about 2,200 feet south of Penn Shop Road in Mt. Airy (the "Property"). The Property is referenced on Tax Map 6, Grid 10 as Parcel 122.

2. The Property is a 0.5-acre lot that is rectangular in shape. The Property is 121.8 feet wide and 179.52 feet deep. The Property slopes slightly down toward the southwest corner.

The Property is improved with a two-story, single-family detached dwelling with an attached three-car, side-loading garage. The structure was built in fall 2005. The 3,480 square foot home is about 57 feet wide and 38 feet deep. The house is located approximately in the center of the Property about 60 feet from Long Corner Road,[1] 81.5 feet from the rear lot line, and 24 feet from the north side lot line. The southeast corner of the house is about 6 feet from the south side lot line and therefore encroaches about 4 feet into the 10-foot side setback required by 104.E.4.b(3)(b).

Access to the Property is gained via a paved driveway that runs from Long Corner Road to the north side of the garage. A septic tank is located behind the driveway. In the rear yard of the home is a septic area.

3. Vicinal properties are also zoned RC-DEO. Immediately to the north of the Property is Parcel 129, a small strip of land that provides access to Parcel 24, a large farm parcel to the west. North of Parcel 29 is Parcel 105, a one-acre lot improved with a 1,776 square-foot single-family detached home. To the east across Long Corner Road is a large

[1] In December 2004, the Director of Planning and Zoning granted the Petitioner an administrative adjustment to reduce the front building restriction line from 75 feet to 60 feet (AA Case No. 04-29).

farm. To the south is a parcel also designated as Parcel 122 that is improved with a large barn.

According to the Petitioner's Exhibit 3, the Property is the smallest of 29 vicinal properties. According to Petitioner's Exhibit 2, several properties northeast of the site are narrower than the Property (e.g., Parcels 101, 102, 103, 141, and 121). According to Petitioner's Exhibit 4, the Petitioner's home is the largest of the 29 properties surveyed.

4. The Petitioner testified that the encroachment of the south side lot line is necessary to allow sufficient room on the north side for a turnaround area for his SUV vehicles.[2] He stated that SUV's are today's standard sized vehicles. He stated that sufficient turnaround room is needed to avoid backing into heavy traffic on Long Corner Road. He also testified that more room was needed on the north side to create a swale to prevent stormwater runoff onto the neighboring lot.

Mr. Gilbert Schultz, the Petitioner's father and builder, testified that the Health Department dictated the location of the septic tank. He stated that a front-load garage could not have been situated at the same location because it would have been too close to the septic tank.

5. Ms. Campbell testified that the encroachment wasn't discovered until the house foundation had been established. A stop work order was issued then lifted when the Petitioner applied for a variance.

Ms. Campbell stated that a variance would not be necessary if the house were smaller.

CONCLUSIONS OF LAW

[2] The Petitioner did not state how much turnaround room is needed or how much is provided.

Based upon the foregoing Findings of Fact, I conclude as follows:

1. The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides that a variance may be granted only if all of the following determinations are made:

> (1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.
>
> (2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.
>
> (3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.
>
> (4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

For the reasons stated below, I find that the requested variance does not comply with Section 130.B.2.a(1) and (3) and therefore must be denied.

2. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward,* 102 Md. App. 691, 651 A.2d 424 (1995). A "practical difficulty" is shown when the

strict letter of the zoning regulation would "unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome." *Anderson v. Board of Appeals, Town of Chesapeake Beach,* 22 Md. App. 28, 322 A.2d 220 (1974).

With respect to the first prong of the variance test, the Maryland courts have defined "uniqueness" thusly:

> "In the zoning context, the 'unique' aspect of a variance requirement *does not refer to the extent of improvements upon the property*, or upon neighboring property. 'Uniqueness' of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to characteristics as unusual architectural aspects and bearing or party walls."

North v. St. Mary's County, 99 Md. App. 502, 514, 638 A.2d 1175 (1994)(italics added).

In this case, the Petitioner has not shown that the Property is in any way unique such that the side setback of Section 104.E.4.b(3)(b) will disproportionately impact it. Although the Property is relatively small in area when compared to others in the vicinity, its overall size does not pose a practical difficulty in complying with the side setback requirement. Indeed, its overall size is still ½ acre – ample space in which to build a reasonable single-family home.[3]

Ordinarily, when considering a request to reduce a side setback, the issue revolves around the lot's narrowness. The Petitioner in this case, however, does not argue that the Property is exceptionally narrow; indeed, the evidence is undisputed that the Property is

[3] It is worthy to note that, in 2004, DPZ approved an administrative adjustment for the front setback of the Property because, when combined with the space needed for a septic field, the building envelope was too shallow. Neither the Petitioner nor DPZ considered the lot to be exceptionally too narrow at that time.

wider than several other properties in the neighborhood. Moreover, the Property's 121-foot width provides ample room in which to locate a reasonably sized home.

The Petitioner argues instead that, due to the size of the house and the configuration of the garage, there is not enough space left to allow sufficient turnaround room in the driveway. The gist of the problem, then, is not the condition of the land, but the size and layout of the home and garage. Clearly, the Petitioner's home is not reasonably sized. The Petitioner's own evidence shows that it is the largest sized home in the area.[4] Moreover, it is only because the Petitioner chooses a three-car, side-loading garage that the issue of turnaround space arises at all.

The variance plan indicates that there is ample room within the building envelope of the lot in which to locate a reasonably sized house with a two-car, front-loading garage and a driveway without the need for a variance.[5] Clearly, then, it is not the shape or other physical condition of the Property that gives rise to the Petitioner's difficulty in complying with the side setback requirement. Rather, the need for the variance arises proximately and only from the size, placement and configuration of the house and garage on the lot. As stated above, however, the Maryland courts have directed that neither I nor the Board of Appeals may consider the location of the improvements on the Property as a unique physical condition of the land for the purposes of the variance requirements. Any practical difficulty must relate to the uniqueness of the land itself, and not to the improvements upon it. I must therefore view

[4] The Petitioner's counsel argued that the other homes in the area are smaller because they were built in the 1800's or early 1900's, and that today's homes are comparable in size to the Petitioner's. Not only is the premise dubious, the assertion is not true – Petitioner's Exhibit 4 shows that 9 homes in the area were built since 1976 and all but one are less than 2,350 square feet.

[5] Indeed, one can presume that the Petitioner's original construction plans as approved by the County , which included the house and three-car side-loading garage, showed that the structures would fit within the building envelope of the lot. Apparently, it was only after the foundation was built and the encroachment was discovered that the Petitioner decided he needed more room for his vehicles to maneuver.

the Property as if the house had not been built. The reason for this rule is to prevent a property owner from creating a need for a variance.[6]

Consequently, the Petitioner has not produced sufficient evidence to pass the first prong of the variance test; that is, he has not shown that the Property has any unusual or unique characteristic that causes the side setback restriction to disproportionately impact upon it. In addition, the Petitioner's request does not pass the second prong – that is, because the proposed structures exceed that which is customary, the Petitioner is not unreasonably prevented from making a permitted use of the Property. For these reasons, the variance request fails to comply with Section 130.B.2.a(1).

3. Section 130.B.2.a(3) of the Zoning Regulations requires that any practical difficulty in complying with the setback requirement may not have been created by the owner. Most often, this "self-created hardship" rule comes into play when the owner has already constructed something on the property that violates the applicable zoning regulations, then requests relief from the regulation in order to avoid the hardship of removing the structure. See, e.g., *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995); *Evans v. Shore Communications*, 112 Md. App. 284, 685 A.2d 4554 (1996); and *Ad+Soil, Inc. v. County Commissioners of Queen Annes' County*, 307 Md. 307, 513 A.2d 893 (1986). Because the practical difficulty in these cases arose from actions of the landowner, and not as a result of the disproportionate impact of the zoning regulations on the particular property, the cases failed the test for variances.[7]

---

[6] See the discussion of the "self-created hardship" rule in section 3 below.

[7] The self-created hardship rule, while listed as the third variance criteria in the Section 130.B.2.a, is actually a complement to the first criterion. If the hardship is self-created, then it is not the result of a unique physical condition of the land and therefore fails the test of Section 130.B.2.a(1) as well.

This is precisely the situation in this case. The Maryland courts have made it clear that whether the hardship was inflicted intentionally or unintentionally is irrelevant; if it was the result of the owner's action or that of a predecessor in title, the variance must be denied. *Salisbury Board of Zoning Appeals v. Bounds,* 240 Md. 547, 214 A.2d 810 (1965); *Cromwell,* 651 A.2d at 441.

While I recognize that correcting the encroachment may be a greater financial undertaking than if the Petitioner were allowed to maintain the house within the setback, I may not take the cost of the work into consideration. "Hardship is not demonstrated by economic loss alone. It must be tied to the special circumstances [of the land], none of which have been proven here. Every person requesting a variance can indicate some economic loss. To allow a variance anytime any economic loss is alleged would make a mockery of the zoning program." *Cromwell v. Ward,* 102 Md. App. 691, 715, 651 A.2d 424 (1995), *quoting Xanthos v. Board of Adjustment,* 685 P.2d 1032, 1036-37 (Utah 1984).

The courts have consistently held that any hardship must relate to the land, and not to the personal circumstances of the owner. See 3 Robert M. Anderson, American Law of Zoning, Section 18.30 (2d ed.). In this case, the practical difficulty in complying with the 10-foot side setback requirement is personal to the Petitioner and does not relate to the land itself. Consequently, the petition does not meet the requirements of Section 130.B.2(3).

Conclusion

It is well established in Maryland law that any practical difficulty must relate to the land, and not to the personal convenience of the particular owner of the land. *Cromwell,* id. While it may be desirable for the Petitioner to be able to locate a house and garage on his

Property of a size and configuration to his liking, it must be accomplished within the restrictions of the Zoning Regulations.

It is not the role of zoning, nor should it be, to accommodate the personal wants or circumstances of each property owner. Rather, the purpose of zoning is to promote the orderly development of land through the imposition of uniform regulations and standards. Variances to these standards are therefore to be sparingly granted, and only under exceptional circumstances. *Cromwell*, 651 A.2d at 430.

Simply put, if I were to grant a variance to this Petitioner to accommodate his personal desires and circumstances, then I must do so for every property owner who is similarly situated. Once granted, a variance is permanent and irreversible. Under such a system, variances would become the rule, and the Zoning Regulations would be rendered meaningless.

Moreover, "it is not the purpose of variance procedures to effect a legalization of a property owner's intentional or unintentional violations of zoning requirements. When administrative entities such as zoning authorities take it upon themselves to ignore the provisions of the statutes enacted by the legislative branch of government, they substitute their policies for those of the policymakers. That is improper." Id. at 441.

The Petitioner in this case has not presented sufficient evidence to show that exceptional circumstances exist to warrant the grant of a variance to the setback requirements. Consequently, I am compelled to deny the request.

ORDER

Based upon the foregoing, it is this **11th day of April 2006**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Jeffery A. Schultz for a variance to reduce the 10-foot side setback to 6 feet for a single-family detached dwelling in an RC-DEO (Rural Conservation – Density Exchange Option) Zoning District is hereby **DENIED.**

HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER

_____
Thomas P. Carbo

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.